

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

SB 1415 – HB 1402

March 30, 2017

SUMMARY OF ORIGINAL BILL: Requires a court to calculate restitution to a victim of involuntary labor servitude using the reasonable market value of the labor or services provided by the victim to the defendant.

FISCAL IMPACT OF ORIGINAL BILL:

NOT SIGNIFICANT

SUMMARY OF AMENDMENT (005667): Deletes and rewrites the bill to enhance desecration of a place of worship or burial from a class A misdemeanor to a class E felony.

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:

Increase State Expenditures – \$35,200/Incarceration*

Assumptions for the bill as amended:

- Tennessee Code Annotated § 39-17-311(a) prohibits any person from intentionally desecrating a place of worship or burial. Tennessee Code Annotated § 39-17-311(b) prohibits any person from intentionally desecrating a state or national flag.
- According to statistics from the Administrative Office of the Courts (AOC), there has been an average of 0.4 convictions per year for violations of Tenn. Code Ann. § 39-17-311, a class A misdemeanor, over the last five years. These statistics represent convictions at the state court level. It is assumed that only 10 percent of misdemeanor convictions are at the state court level. It is assumed that there are a total of four convictions (0.4 x 10) per year for violations of Tenn. Code Ann. § 39-17-311.
- In *Texas v. Johnson*, 491 U.S. 397 (1989), the Supreme Court of the United States held that a Texas law punishing the desecration of venerated objects was unconstitutional in so far as it punished someone for desecrating a flag.
- Given the holding in *Texas v. Johnson*, affirmed by *U.S. v. Eichman*, 496 U.S. 310 (1990), it is assumed that the convictions under Tenn. Code Ann. § 39-17-311 over the

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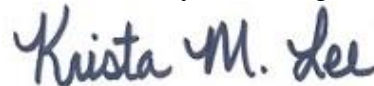
last five years were all prosecuted under subsection (a) for desecration of a place of worship or burial.

- The proposed legislation would enhance these offenses to class E felonies.
- It is assumed that most violations of Tenn. Code Ann. § 39-17-311 are nonviolent, and therefore, most will be sentenced to probation.
- It is assumed that the proposed legislation will result in one additional class E felony admission.
- Population growth will not impact the proposed legislation, and a recidivism discount does not apply because this is a new felony offense.
- According to the Department of Correction (DOC), the average operating cost per offender per day for calendar year 2017 is \$68.75.
- The average time served for a class E felony is 1.40 years.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender serving 1.40 years (511.35 days) at a cost of \$35,155 (\$68.75 x 511.35 days).
- The proposed legislation will increase the felony caseloads for courts, public defenders, and district attorneys by four cases, but will conversely decrease their misdemeanor caseloads. It is assumed they can accommodate the impact within their existing resources.

**Tennessee Code Annotated § 9-4-210 requires an appropriation from recurring revenues for the estimated operation cost of any law enacted after July 1, 1986 that results in a net increase in periods of imprisonment in state facilities. The amount appropriated shall be based upon the highest cost of the next 10 years.*

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



Krista M. Lee, Executive Director

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